

DRAFT

Blue Ribbon Water Task Force

Minutes

August 27-28, 2003

Albuquerque, NM

Attendees: Brian Burnett, Bill Hume, Larry Blair, Paul Duran, Eileen Grevey Hillson, G.X. McSherry, Kyle Harwood, Debbie Hughes, Howard Hutchinson, Manuel Trujillo, Louis Gariano, Cyle Sharp, John Leeper, Sarah Kotchian, Steve Hernandez, Elmer Salazar, Bob Vocke, Conci Bokum, Stan Bulsterbaum, Frank Chaves, Barbara Johnson, Hoyt Pattison, Elmer Lincoln Jr., Paul Paryski, Jack Westman, Tami Rubin, Peter Davies, John D'Antonio, Estevan Lopez, Anne Watkins, and William Toribio attended the BRWTF meeting. Carlos Romero (NMFA), Rhea Graham (ISC), Sue Umshler (RCAC), Blanca Surgeon (RCAC), Matt Holmes (NMRWA), Erik Galloway (NMED/DWB), Ken Hughes (DFA), Liz Zeiler (ISC), Alice Darilek (OSE), Jean Witherspoon (COA/Alliance), Jennifer Wellman (Pueblo of Santa Ana), Keith Melton (EFC/NMT), and Retta Prophet (NMED/DWB) attended as guests.

The next meeting of the BRWTF will be September 23-25, 2003 in Albuquerque at the State Water Plan Town Hall.

Carlos Romero discussed water project financing with the Task Force and made the following points:

- There are two financing approaches (pay as you go using cash reserves and debt repayment over time [construction inflation averages 7% & interest rate averages 4%]);
- Water project needs include public water supplies (tends to be primary focus), agriculture, ranching, instream flow, and compacts;
- Cities and counties have identified financing needs of \$990M in 5 years (freshwater infrastructure), \$970M in 5 years (wastewater), and \$250M in 5 years (water rights & storm water) with a total of \$3B identified in the longer term;
- NM currently has \$10-12M/yr available for water project financing with a total need of \$5B;
- Financing mechanisms include NMF loan programs and municipality & tribal debt approaches e.g., general obligations;
- Infrastructure capital improvement plans are filled out for the State;
- Rural communities must plan effectively (economics and engineering);
- NM's approach to water project financing has been piece-meal;
- The legislative capital outlay process has \$400M waiting to be spent because communities couldn't do entire projects;
- Many water delivery systems are falling apart and communities didn't collect sufficient replacement funds;
- Infrastructure requirements of \$200M (of the \$990M identified) have less than 100 users on systems;
- Small systems (15-20 users) are heavily subsidized;
- The Finance Authority is considering going regional with these small systems to share resources and make systems more resilient;
- Wastewater discharges, which are water quality issues (nitrates and fecal coliform bacteria), can become quantity issues with one solution being to drill wells;
- The NM Finance Authority now wants to know (especially if there is a contamination issue) – do you have adequate water rights, do you have a certified operator (it is required), and what do you do with your wastewater;
- People are becoming increasingly conscious of clean water with drought emergency conditions;
- Additional emphasis must be placed on approved septic systems (inspection, pumping, and treatment/release with appropriate fees);
- The State can influence community policy when State funds are being used;
- The Feds want to give block funding to the states e.g., SDWA and use revolving loans, which increases the need for state-wide coordination and prioritization for water project financing;

- In many small communities the water and wastewater systems provide the only source of community revenue;
- Las Vegas was provided emergency drought assistance (\$400,000 Finance Authority & \$60,000 from Governor) and requested that unspent funding be used for 5,000 meters with intent of increasing revenue and decreasing use;
- Communities are now being asked if they meter water usage in the questionnaire;
- 63% of NM's water systems have less than 100 users and 8 systems serve 60% of the State's needs;
- Setting state-wide priorities is important – how do we do it (e.g., Navajo-Gallup pipeline, SJC diversions, Ute pipeline, below Elephant Butte, Tularosa Basin desalination, town of Deming, & Espanola Basin);
- How do you best finance water projects (e.g., tax on community, use fees, impact fees, severance tax, general obligation bonds, & gross receipts tax)
- How do we use federal funds strategically;
- Do we engage the private sector to finance water projects – how would this work;
- There are 1,400 public water supplies in NM – many are private e.g., trailer parks; and
- The private sector would pass cost to the customer in the market place, which would influence demand;

The following points were made during BRWTF discussions with Carlos:

- The private sector should be able to secure low interest loans – anti donation issues should not be a problem;
- Engaging the private sector brings private sector objectives to the table;
- Private land developers have put water systems in place that have failed and become a public issue;
- The private sector will respond if there is a profit to be made e.g., El Paso - \$300M;
- Water should be managed for the public good not profit;
- Appropriated water is a property right and must be put to beneficial use;
- Public welfare is considered during a water right transfer;
- If there is a state-wide general obligation bond, how do you get your fair share locally – should the general obligation bond vote be local;
- There are pros and cons to privatization of water - commodification of water is an issue;
- The private sector needs strong and accountable regulation;
- The NM congressional delegation is frustrated with the lack of state-wide coordination and priority setting for federal assistance e.g., California came in with one request and it was funded (the Water Trust Board can help with this issue);
- The public must be informed that the well being of the State depends on coordinated prioritization and funding of water projects – the BRWTF should assist in getting this message out;
- A state-wide economic model predicting economic development based on increased or decreased water availability is important in understanding the tax base for NM;
- NMFA checks for local matches for federal grants;
- Watershed restoration projects need to be considered as part of water project financing – they are included;
- The NMFA should look at alternative (less technical/lower cost) approaches to water and wastewater;
- Federal funding “strings attached” can be a problem;
- Kansas has successfully prioritized projects by quadrant using a “water congress” – projects then go for legislative approval;
- NMSU has a model, which could be used for economic impact analysis;
- NMFA funds small systems now and is looking to fund more effective/efficient regional systems;
- NM can set priorities for project funding reducing the number of federal strings – federal funds are important (the same can be done for general obligation bonds – no political strings – no individual projects);

- The NM Highway Commission has a prioritization process (not the legislature), which could serve as a model;
- Natural gas in NM is distributed by the private sector and is highly regulated;
- The water delivery infrastructure must be considered – this is part of the needs assessment;
- Where/how does the State interface/influence local water use – the State will have a say when providing grant assistance, but will not tie strings to loans;
- In concept, user fees of \$20-26M could be used for \$200M in projects;
- Local options exist e.g., Santa Fe County passed a gross receipts tax and will use 65% of it for the SJC diversion project;
- A state-wide gross receipts tax of 1/16% would yield \$40-50M and bond to \$475M;
- A water-user fee will be introduced in the next legislative session;
- Precipitation enhancement opportunities should be considered during water project financing (25% in snowpack enhancement was demonstrated 30 years ago); and
- Need to fill out ICIP – Infrastructure Capital Improvement Plan (40 out of 600).

Anne Watkins covered the NM Drought Strike Team with BRWTF and made the following observations:

- NM Drought Task Force member organizations include - OSE, ISC, Department of Environment, NM Finance Authority, Department of Finance and Administration, Energy, Minerals & Natural Resources Department, Department of Agriculture, Office of Emergency Management of DPS, Office of Indian Affairs, Policy and Planning, Economic Development Department, and Department of Tourism;
- One objective is to identify drought-related drinking water crises and determine how to get water or funding to alleviate the situation;
- Non-drought emergency requests go to NMFA;
- The Task Force consists of the following work groups – Monitoring (monitor drought), Drinking Water (conservation, rate structures, & best management practices), Agricultural Sector (conservation, incentives, & conserved water), Recreation, Tourism & Economics (economic development), and Wildlife & Wildfire (prevent wildfires);
- The September 16, 2003 Drought Summit will focus on drought science – invitations were extended to BRWTF members;
- The Drinking Water Work Group wants to develop a model sustainable system by identifying 4 or 5 small water systems with agriculture nearby and developing a strategic plan to work together in the geographic area – look holistically at land use and development – what type of systems should be funded; and
- The Agricultural Sector Work Group is focused on comprehensive water conservation for the State and watersheds (surface water and groundwater recharge) on a landscape scale (includes private incentives, rural economic development and environmental issues).

The following points were made during BRWTF discussions with Anne:

- The Drought Task Force is using the drought to get at some issues, which will help the State prepare for mega-drought;
- Drought vulnerabilities are greater now than during the 1950's – how do we manage the risk;
- The Tribes have been invited to participate on the work groups;
- BoR and BIA have differing opinions on prior and paramount water rights on the middle Rio Grande;
- Lack of water storage rights impacts acequias;
- Raising public awareness is important e.g., regional water planning, SWP process and Drought Summit;
- There is a lot of misinformation out there – education/awareness must be taken to the next level (an informed public is needed, including the State Legislature);
- Working toward needed legislation, including an informed public, is important;
- The end-of-year goal for the SWP creates “rolling thunder” for the State;
- A state mandate to amend land use codes e.g., Santa Fe County water conservation ordinance should be considered;

- In terms of awareness/education, separate the general public and legislators/decision makers and concentrate initially on legislators/decision makers;
- Everybody should take responsibility and work with neighbors;
- Education in the schools is also important – they will take it home; and
- The State is in better shape to handle drought now than it was 3-4 years ago e.g., the State Water Plan Framework and hydrographic surveys, and OSE/ISC staffing & resources.

John D'Antonio made the following points with the BRWTF:

- The OSE project management philosophy is to have project schedules on all activities;
- OSE currently has \$27M in contractual services;
- There will be a meeting with the Governor on August 28, 2003 to lay out funding/staffing requirements (\$43-44M operating budget, conversion of limited term [132 or 40% of the office] to permanent over 3 years, adding 31 FTEs [e.g., Aztec & Santa Fe district offices, water conservation, municipal conservation plans, water masters, SWP, weather control act rules & regulations]);
- Federally-funded earmarks (e.g., BoR) for NM are also being discussed; and
- The Governor is focused on economic development, education, and water.

The following points were made during BRWTF discussions with John:

- The BRWTF agreed to endorse expanded resources for OSE;
- An effort should be made to capitalize on the Governor's education/water focus to increase public awareness/education;
- OSE could increase permit application fees – some fees are being raised, but they go to the general fund; and
- Consideration is being given to raising the domestic well fee to create an impact fund;

The Task Force briefly discussed the Rio Grande silvery minnow. Three tracks are being pursued – a full 10th Circuit hearing, Governor's Office negotiating agreement to operate river to meet biological opinion, and riders on federal legislation to exempt SJC water from ESA. It was pointed out that Rio Grande Compact credits with Texas will be exhausted next year.

The BRWTF discussed activities on the Pecos River and the following points were made:

- The goal is to bring the Pecos River into balance over the long term and use augmentation well fields to ensure water delivery to CID and State line for compact delivery;
- There is a 6,900 af credit now;
- ISC closed bids for purchase of land at end of July;
- ISC has 7,300 acres offered in CID (4,500 acres needed) and 19,000 acres offered upstream and downstream of CID (7,500 acres needed);
- Offers tend to be above market values; and
- The State will own the land and may lease it back as rangeland.

The Task Force discussed Navajo Dam and the following points were made:

- Shortage sharing agreement was reached for 2003;
- Shortages are likely to be worse in 2004;
- Navajo Dam water shortage issues include the Navajo Irrigation Project, other water users, ESA, power production, dam safety/structure, and federal shortage sharing; and
- Navajo-Gallup is very important for NM (\$400M plus project, but being asked to give up much more).

The BRWTF had general discussions relative to the Task Force and the following observations were made:

- The Task Force needs to focus on specific areas where the input can be provided to the Governor;
- Consensus is needed on input to the Governor;
- OSE needs a lot more resources – water is a public good and the State is responsible for its administration;

- BRWTF members need to go back to constituencies they represent and their legislators and muster support before the legislative session;
- BRWTF may not always have 100% consensus, but must move forward;
- A protocol for consensus is need;
- BRWTF owes the Governor a report each November and has advisory responsibilities to the Governor;
- The Task Force needs to focus on the SWP/Town Hall and upcoming legislative session in the near-term;
- BRWTF should expand its knowledge with each session; and
- BRWTF should understand the Treaty of Guadalupe Hidalgo and State water law.

Rhea Graham discussed the SWP process with the Task Force and made the following observations (also see BRWTF handout, which is a discussion note and not a summary of the public meetings):

- Public and Tribal facilities have been used for the public meetings and people have provided great services;
- There is commitment to develop water policy;
- The Governor is aggressively getting out to the public;
- Meeting attendance is high with good area attendance;
- Albuquerque attendance was poor possibly due to the “remote utility” construct;
- There is a lot of interest in the upcoming Town Hall;
- A lottery (possibly based on the 3 congressional districts) may be used to add attendees;
- Water policies must be enduring and able to withstand the drought;
- Public meeting Stewardship feedback – no disagreement that it is important, living off the land is highly valued, equity is important, and frugality is good;
- Public meeting Supply and Demand feedback – perception that demand will grow & supply will not and technical & infrastructure investment is not being realized;
- Public meeting Drought feedback – perception that urban areas don’t experience it, perception that for conservation one goes to agriculture first (more sharing is needed), and conservation incentives are needed; and
- Public meeting Water Administration feedback – polarization perceptions and perception that people get bad news not the agency with all the power and all the answers.

The following points were made in BRWTF discussions with Rhea:

- Relative to equity, NM has a priority administration system;
- Equity is seen as a money issue e.g., release of Elephant Butte compact credit water;
- There is misunderstanding when it comes to NM water law and no effort is being made to educate at the public forums;
- The State Engineer must consider for proposed out-of-state water transfer – water supply, demand, & shortage (can water subject to transfer out-of-state be used to address shortage);
- Acequia preservation should be a priority;
- Tribes and acequias are a given based on priority of their water rights – priority administration is central to NM water law;
- Breakout groups at upcoming Town Hall need to consider watershed restoration and riparian systems;
- Headwaters (forest health), removal of non-native riparian species, and economic development will be considered at the Town Hall;
- The Town Hall goal, after the plenary session on the final day, is to have a consensus policy framework;
- People need to understand need for diversity (rural, cultural, ecosystem);
- Providing participants information in advance of the upcoming Town Hall is important;
- Five questions will be answered at the Town Hall – the questions are not completely formulated, Task Force members will be asked to answer the questions at the Town Hall and should not influence question phrasing;

- Albuquerque is a special problem because people are removed from water issues e.g., (many people are new to Albuquerque, city government is responsible for delivering water, the relative amount of water used compared with other users [e.g., MRGCD] is not that great) and there have been too many meetings, but it is a large voting block;
- Albuquerque is not necessarily unique, however, the SWP public process can also reach out to others as well as those that have been active in the water dialogue;
- Many citizens don't know about the SWP;
- Tribal/Pueblo SWP consultation is important;
- State agencies need to collaborate on the SWP e.g., Water Quality Control Commission Triennial Review;
- Water planning is a continuing process - it doesn't end with the SWP this year;
- People are not ready to deal with state-wide details – regional water plans contain details;
- The local public meetings are to raise awareness and hear the diversity of opinion & local flavor;
- State policy framework will be developed at the Town Hall;
- The handout has an agriculture focus;
- Silver City public meeting comments focused in two areas – administering water & planning infrastructure delivery and some comments didn't reflect understanding of State water law & prior appropriation;
- The Town Hall outcome cannot be inconsistent with State water law and prior appropriation;
- Water right holders in the Estancia Basin regional water planning process were drowned out by those that didn't want to hear about NM water law – it was too late to educate and decision makers must know what they are talking about;
- The State needs to focus on conserving watershed water, funding OSE to become more sophisticated in administering and managing water, and education (especially in the schools);
- Albuquerque elected officials have invested \$2B in water and wastewater resulting in good jobs/pay with a negligible water supply and have invested in a 5% rate increase per year to pay for future requirements – Albuquerque has an “urban environment” water culture;
- The El Paso Public Service Board is autonomous from the City Council and is responsible for delivering water where the City Council wants it as cheaply as possible;
- The public turned the Pecos River compact compliance issue over to the NM Legislature for bail-out and doesn't know the full cost;
- The SWP is a great effort (meetings around the State and moving toward common goals, priorities & objectives) and previous Town Hall meetings on water (which had read ahead materials) have not produced a divergence between recommendations and State water law;
- More engagement of legislators is needed to get legislation passed;
- BRWTF engagement by participating in the Town Hall, passing legislation, and advising the Governor is important;
- Attendees at the Town Hall will include ISC, BRWTF, Water Trust Board, NM Acequia Commission, Tribes/Pueblos, staff from other agencies, and the general public;
- Some information will be distributed before the Town Hall;
- Pre Town Hall information that would be useful includes summary from 29 public meetings, regional water plan recommendations, and NM water law;
- The SWP process will move forward from the Town Hall per the legislation (e.g., SWP to ISC for approval) and the SWP will be a living document;
- The SWP should make a difference with the NM Legislature and Governor;
- The BRWTF should hear a presentation on Native American water rights – a majority of people in NM don't understand the situation;
- The SWP could be viewed as a “zoning ordinance” facilitating those things that need to be done e.g., the El Paso situation and Water Trust Board funding;
- “Which barn” is the SWP – policy level framework, interstate water issues, allocation of Water Trust Board funds, or legislative SWP – we need consensus; and
- The SWP must start with policy level framework and eventually address the other “barn” areas.

The Drought Task Force Drinking Water Work Group made the following points during discussions with the BRWTF:

- Water conservation activities include publishing education materials (e.g., residential, xeriscaping, rain water harvesting, indoor water efficient appliances, and fixing leaks, and industrial water audits) and holding M&I, school, and teacher workshops – an OSE web site is available (note: funding with an issue as BoR funding disappear);
- SB 554 requires water conservation and drought contingency plans (NMFA and Water Trust Board require plans in 2005) for more than 500 hookups (want to bring this number down);
- M&I best management practices (BMPs) cannot be too complicated or expensive;
- BMPs (e.g., water metering, water accounting, water rates, education, & water waste enforcement) must be part of the 40-year plan;
- 2nd level BMPs include residential audits, landscaping, incentives (e.g., for appliances), water reuse/recycling, and protecting water quality;
- State-level BMPs include incentives, water banking, using poor quality water, water efficient state buildings, and reducing system losses;
- Providing technical assistance is important e.g., to mutual domestics;
- Focus technical assistance on project-related emergencies;
- Certified operators are needed;
- NM water systems are mostly public and the State must take the lead role in creating incentives for efficient water use – Santa Fe and Albuquerque have been able to do it;
- Subdivisions (with water rights) running the water system as a private entity have no incentive to conserve;
- Some states have utility taxes on resources used;
- State conservation efforts (e.g., universities and state-funded buildings) need to be accelerated;
- Metering and measuring can reduce usage;
- Regional collaboration among systems is important;
- Additional funding is needed;
- Many small rural systems are in trouble – regional systems could be the solution;
- Regional collaboration is important e.g., fire protection and watershed restoration;
- Water and wastewater rate setting should consider (full cost recovery) what is fair and equitable, cost of O&M, reserves for emergencies, replacement, & BMPs;
- A big problem is using 20 year loans on items that last 4-5 years;
- Drought has made the situation worse (e.g., storage needs, pipe losses, and failure);
- Land and water use are connected – local ordinances/subdivision act should make sure water (100 years not 40 years or less) and infrastructure are there for development;
- Beneficial use should include conservation; and
- Comprehensive conservation planning is needed.